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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,942	03/25/2004	Gerald L. Thompson	7330	6876

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EXAMINER	
BRUENJES, CHRISTOPHER P	
ART UNIT	PAPER NUMBER
1772	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/808,942	THOMPSON ET AL.	
	Examiner	Art Unit	
	Christopher P. Bruenjes	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 May 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10,13,14 and 23-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10,13,14 and 23-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *20070417*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 19, 2007 has been entered.

WITHDRAWN REJECTIONS

2. The 35 U.S.C. 103 rejections of claims 8, 10, 13-14, and 23 over Weinstein in view of Gembala, Trabbold, and Szwarc of record in the Office Action mailed January 16, 2007, Pages 3-8 Paragraph 5, have been withdrawn due to Applicant's amendments in the Paper filed May 16, 2007.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 contains the trademark/trade name Ecosorb. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a commercially available essential oil additive and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 10, 13-14, 24-26, and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walter (USPN 3,140,220) in view of Weinstein et al (US 2001/0030018 A1) and Gembala (US 2004/0166087 A1).

Regarding claims 10, 13-14, 24, and 26, Walter teaches a faced insulation assembly comprising a glass fiber insulation blanket (col.2, l.60-72) having a first major surface and a second major surface that are each defined by the length and

width of the glass fiber insulation blanket (Figure 1). The glass fiber insulation blanket has lateral edges extending along the length of the glass fiber insulation blanket (Figure 1). The assembly further comprises a facing formed from a paper sheet material (reference number 14, Figure 1 and col.5, l.25-27). The facing has an outer major surface and inner major surface with lateral edge portions adjacent to the lateral edges of the glass fiber insulation blanket (Figure 1). The assembly further comprises an asphalt coating layer on the inner major surface of the facing that bonds the facing to the first major surface of the glass fiber insulation blanket (col.5, l.25-35). The asphalt coating layer does not extend to the lateral edges of the glass fiber insulation blanket such that the lateral edge portions of the facing are not bonded to the first major surface of the glass fiber insulation blanket by the asphalt coating layer (Figure 1 and col.5, l.25-35).

Walter fails to explicitly teach that the paper sheet material of the facing is formed from Kraft paper and fails to teach that an odor-reducing additive is added to the asphalt coating layer.

Weinstein et al teach facing sheets or liners on building insulation assemblies formed form paper are formed from Kraft paper or foil-scrim-Kraft paper laminates, because of Kraft

papers particular usefulness in building insulation facings (p.5, paragraph 43). Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to form the paper liner or facing of the building insulation assembly of Walter from Kraft paper or a foil-scrim-Kraft paper laminate, because those materials are known in the art to be particular useful and typically used as liners and facings in building insulation assemblies, as taught by Weinstein et al.

Gembala teaches that the need for odor reduction and masking in the asphalt compositions is well known in the construction industry (p.1, paragraph 4). Gembala further teaches that essential plant oil odor-reducing additives are added to asphalt in order to reduce and mask the odor of the asphalt composition (p.1, paragraph 7). Gembala also teaches that the fragrance is added in moderate amounts so as not to interfere with the performance or workability of the asphalt (p.1, Paragraph 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add an essential plant oil odor-reducing additive to a asphalt used in the art of roofing materials in order to reduce and mask the odor of the asphalt composition, as taught by Gembala, and that the amount of the additive would be

optimized based on the amount needed to reduce and mask the odor without interfering with the performance of the asphalt, as taught by Gembala.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add an essential plant oil odor-reducing additive in the amount claimed to the asphalt coating layer of Walter in order to reduce and mask the odor of the asphalt composition as desired in the construction industry, as taught by Gembala. Furthermore, the amount of the additive would be selected by one having ordinary skill in the art after routine experimentation to determine the optimal amount desired to mask the odor without interfering with the performance or workability of the asphalt in an amount approximating 1 part by weight of the odor-reducing additive to 10,000 parts asphalt blend, as taught by Gembala.

Regarding claims 25 and 31, Walter fails to teach the particular width of the lateral edge portions of the facing. However, the intention of the lateral edge portions of the facing is to staple or bond the lateral edge portions to framing members in the attic floor or walls of a building. Therefore, the lateral edge portions would have a width corresponding to the width of standard framing members. Weinstein et al specifically teach that useful corresponding widths for the tab

members is about ½ to about 1 and ½ inches (p.6, paragraph 49). Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to select the wide of the lateral edge portions of the facing of Walter within the range of ½ and 1 and ½ inches because that range represents a typical corresponding width for use in stapling or bonding the lateral edge portion of the facing to the framing members when installing in building walls and attic floors as taught by Weinstein et al.

Regarding claim 30, Walter teaches that the glass fiber insulation assembly contains a plurality of slit lines wherein the portions of the facing adjacent to the plurality of slit lines are not bonded to the first major surface of the glass fiber insulation blanket by the asphalt coating layer (col.5, l.14-24), but fails to teach that the separable insulation sections are separable by a plurality of lines of weakness aligned on the plurality of slit lines. Weinstein et al teach that slit lines are replaced with lines of weakness so that the insulation blankets can be separated and sized at the job site without the need to cut the fibrous insulation blankets with knives or similar cutting tools which are both time consuming and can result in cuts or other injuries to the workers (p.1, paragraph 7). Therefore, it would have been obvious to one

having ordinary skill in the art at the time Applicant's invention was made to form lines of weakness in place of the plurality of slit lines of Walter in order to eliminate the need for cutting tools to separate the blankets that can lead to loss of time and possible injuries to workers, as taught by Weinstein et al.

Regarding claim 29, Ecosorb 606SG-3 and Ecosorb 606SG-3AB are commercially available essential plant oil odor eliminating additives and Gembala teaches that essential plant oil odor eliminating additives are added to asphalt coatings as explained above. Therefore, it would have been obvious to one having ordinary skill in the art to select commercially available essential plant oil that serves the same purpose as desired by the teachings of Gembala.

8. Claims 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walter, Weinstein et al, and Gembala as applied to claim 24 above, and further in view of Szwarc (USPN 2,496,566).

Regarding claims 23 and 27, Walter, Weinstein et al, and Gembala taken as a whole teach all that is shown above, but fail to teach that the Kraft paper sheet material with the asphalt coating layer is fungi growth resistant. However, Szwarc

teaches asphalt used to form water-vapor resistant Kraft paper, such as the Kraft paper sheet of Weinstein et al, contains a fungicide in an amount sufficient to render the sheet material fungi growth resistant (col.1, l.18-20 and col.2, l.6-11). Therefore, it would have been obvious to one having ordinary skill in the art that fungicides are added to asphalt coating used to form water-vapor resistant coated Kraft paper in order to render the paper sheet material fungi growth resistant, as taught by Szwarc.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add a fungicide to the asphalt coating of Walter, Weinstein et al and Gembala in order to render the Kraft paper sheet material fungi growth resistant, as taught by Szwarc, since one of ordinary skill in the art recognizes that fungi growth resistance is useful for water vapor resistant coated papers, as suggested by Szwarc.

Regarding claim 23, Szwarc teaches that the asphalt coated on the Kraft paper is rendered fungi growth-resistant by adding a growth-inhibiting agent as shown above. Therefore, the Kraft paper sheet material containing the growth-inhibiting agent incorporated in the asphalt coating would be fungi growth-resistant Kraft paper sheet material.

9. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walter, Weinstein et al, and Gembala as applied to claim 24 above, and further in view of Taylor et al (USPN 6,331,350).

Walter, Weinstein et al and Gembala combined teach all that is shown above and that the glass fibers are bonded together at their points of intersection (col.2, l.68-72 of Walter), but fail to teach using an odorless binder such as acrylic when forming the fibrous insulation blanket. However, Taylor et al teach that it is known in the art of glass fiber insulation blankets for use in building insulation to use a phenolic powder resin containing formaldehyde as a binder to bond together the glass fibers (col.1, l.15-30). Taylor et al goes on to teach that manufacturers of insulation products have started to offer formaldehyde-free products to provide the consumers an alternative to the traditional insulation products, especially in light of increasingly stringent Federal regulations with regard to minimization of volatile organic compounds (col.2, l.17-33). Taylor et al teach that the currently used formaldehyde free binder used in glass fiber insulation is an acrylic thermosetting binder (col.2, l.34-40). Note that acrylic thermosetting binders are inherently substantially

odorless. Therefore, one of ordinary skill in the art would have recognized that acrylic thermosetting binders, which are odorless, are substituted for formaldehyde binders in the formation of glass fiber insulation, since the industry is looking for alternatives formaldehyde based binders because of the increasingly stringent Federal regulations on volatile organic compound emissions, as taught by Taylor et al.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to substitute an acrylic thermosetting binder, which is odorless since it is a known formaldehyde free insulation, as taught by Taylor et al, for the binder used in the glass fiber insulation blanket of Walter, in order to provide a glass fiber insulation blanket that is formaldehyde free, since the industry is looking for alternatives formaldehyde based binders because of the increasingly stringent Federal regulations on volatile organic compound emissions, as taught by Taylor et al.

Response to Arguments

10. Applicant's arguments with respect to claims 10, 13-14, and 23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB
June 22, 2007